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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,822	07/01/2003	Mark A. Mochring	500580.08	3901
7590	10/31/2007		EXAMINER	
Kimton N. Eng, Esq. DORSEY & WHITNEY LLP Suite 3400 1420 Fifth Avenue Seattle, WA 98101			JAWORSKI, FRANCIS J	
			ART UNIT	PAPER NUMBER
			3768	
			MAIL DATE	DELIVERY MODE
			10/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/612,822	MOEHRING, MARK A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jaworski Francis J.	3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 March 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 57,59-73 and 75-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 57,63,64,73,79,82-84,89,92-95,99 and 102 is/are rejected.
- 7) Claim(s) 59-62,65-72,75-78,80,81,85-88,90,91,96-98,100,101 and 103 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/16/07.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 57, 63 - 64, 73, 79, 82 - 84, 89, 92 –95, 99 and 102 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims variously of U.S. Patents No. 7128713 as described below, further in view of Hayakawa et al US4751929, of record. Although the conflicting claims are not identical, they are not patentably distinct from each other because whereas the former claims time interval Doppler shift determination along with a hemodynamic characteristic and does not claim A/D digital quantification for processing, claim 2 therein identifies that the hemodynamic characteristic is power, and Hayakawa et al evidences that A/D quantification during e.g. quadrature processing to determine Doppler shift would have

been well-known to the artisan since the further frequency shift determination involves digital processing schemes.

A memory would be required for example to buffer data for the claimed display of data obtained over intervals in '713 or to effect signal averaging for example as disclosed in Hayakawa et al.

Average or mean velocity computing is taught in the latter as well as production of a velocity wavetrace.

#### ***Allowable Subject Matter***

Remaining dependent claims are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following art is cited as of interest:

Kawasaki et al (US5190044) uses power measurements to discriminate bloodflow.

Shinomura et al (US5249577) uses intensity data for aiming an ultrasound measurement in different elevation planes.

Angelsen et al (US4932415) makes general suggestion to use Doppler power in a control function to detect regions of aliasing in a Doppler shift frequency image.

With respect to the IDS filing, Criton et al is directed to Doppler shift measurement at plural depths and time intervals to form a Doppler-based M-mode display; Pflugrath et al is directed inter alia to two dimensional power Doppler display using multiple data for each scanline along its depth direction, and Chiang et al similarly

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has a Doppler imaging mode, and were of greater relevance prior to the submission of claims in their current amendatory form.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj

10/25/07



Francis J. Jaworski  
Primary Examiner